

## **MUNICIPAL CODE**

### **Chapter 1**

#### **GENERAL PROVISIONS**

- Sec. 1-1. Designation and citation of Code.
- Sec. 1-2. Definitions and rules of construction.
- Sec. 1-3. Catchlines of sections and other headings.
- Sec. 1-4. Filing of documents incorporated by reference.
- Sec. 1-5. References to chapters or sections.
- Sec. 1-6. History notes, editor's notes, state law references and cross references.
- Sec. 1-7. Provisions considered continuation of existing ordinances.
- Sec. 1-8. Code does not affect prior offenses or rights.
- Sec. 1-9. Effect of repeals and amendments.
- Sec. 1-10. Certain ordinances not affected by Code.
- Sec. 1-11. General penalty.
- Sec. 1-12. Additions and amendments deemed part of Code.
- Sec. 1-13. Supplementation of Code.
- Sec. 1-14. Conflicting provisions.
- Sec. 1-15. Severability of parts of Code.

## GENERAL PROVISIONS

### **Sec. 1-1. Designation and citation of Code<sup>1</sup>.**

The ordinances embraced in the following chapters and sections shall constitute and be designated the "Municipal Code of the City of Evansville, Wisconsin" and may be so cited.

### **Sec. 1-2. Definitions and rules of construction<sup>2</sup>.**

In the construction of this Code, and of all ordinances, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the common council:

*Generally.* Words shall be construed to have their ordinary, usual and customary meanings unless the contrary is clearly indicated.

*City.* The term "city" means the City of Evansville, Wisconsin, and shall extend to and include its several officers, agents and employees.

*City clerk-treasurer, chief of police or other city officers.* When the clerk-treasurer, chief of police or other city officers or departments are referred to by title only, such reference shall be construed to mean the clerk-treasurer, chief of police or such other municipal officers or departments, respectively, of the City of Evansville, Wisconsin.

*Code.* The term "Code" means the provisions of chapters 1 through 130, inclusive, and as may be subsequently amended, of the Municipal Code of the City of Evansville, Wisconsin.

*Common council and council.* The terms "common council" and "council" mean the common council of the City of Evansville, Wisconsin.

*County.* The term "county" means the County of Rock, Wisconsin.

*Delegation of authority.* Whenever a section of this Code requires or authorizes an officer or employee of the city to do some act or perform some duty, it shall be construed to authorize the officer or employee to designate, delegate and authorize subordinates to perform the act or duty unless the terms of the provision or section specifically provide otherwise.

*Gender<sup>3</sup>.* Words importing one gender extend and may be applied to any gender.

*Highway.* The term "highway" includes any street, alley, highway, avenue or public place or square, bridge, viaduct, tunnel, underpass, overpass and causeway in the city, dedicated or devoted to public use.

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<sup>1</sup> **State law references:** Authority to codify ordinances, Wis. Stats. § 66.035.

<sup>2</sup> **State law references:** Similar provisions, Wis. Stats. §§ 990.001, 990.01.

<sup>3</sup> **State law references:** Similar provisions, Wis. Stats. § 990.001(2).

*Joint authority.* Words purporting to give authority to three or more officers or other persons shall be construed as giving such authority to a majority of such officers or other persons, unless it is otherwise declared.

*May, shall and will.* The term “may” shall be construed as being permissive and discretionary. The term “shall” shall be construed as being mandatory. The term “will” shall be construed as directory and shall be construed as requiring action, but allowing for reasonable discretion in how the action is actually carried out.

*Month.* The term “month” means a calendar month.

*Number.* Any word importing the singular number shall include the plural, and any word importing the plural number shall include the singular.

*Oath.* The term “oath” shall be construed to include an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the terms “swear” and “sworn” shall be equivalent to the words “affirm” and “affirmed.”

*Officers, employees, departments, boards, commissions or agencies.* Whenever a reference to an officer, employee, department, board, commission or agency appears, it shall be construed as if followed by the words “of the City of Evansville, Wisconsin.”

*Or, and.* The term “or” may be read “and,” and the term “and” may be read “or,” if the sense requires it.

*Owner.* The term “owner,” as applied to a building or land, includes any part owner, joint owner, tenant in common, tenant in partnership, joint tenant, or tenant by the entirety, of the whole or of a part of such building or land.

*Person.* The term “person” includes all partnerships, associations and bodies politic or corporate, as well as individuals.

*Personal property.* The term “personal property” includes money, goods, chattels, things in action, evidences of debt and energy.

*Property.* The term “property” includes real and personal property.

*Public place.* The term “public place” means any place subject to the primary control of any public agency, including but not limited to any park, street, public way, cemetery, schoolyard or open space adjacent thereto and any lake or stream.

*Real property.* The term “real property” includes lands, tenements and hereditaments, and all rights thereto and interests therein.

*Sidewalk.* The term “sidewalk” means any portion of a street between the curb, or the lateral line of the roadway, and the adjacent property line, intended for the use of pedestrians.

*Signature.* If the signature of any person is required by law, it shall always be the handwriting of such person or, if the person is unable to write, the person's mark or the

person's name written by some other person at the person's request and in the person's presence, or, subject to any applicable requirements under Wis. Stats. §§ 137.04--137.06, the electronic signature of the person.

*State.* The term "the state" or "this state" means the State of Wisconsin.

*Street.* The term "street" includes any highway, street, avenue, boulevard, road, alley, lane, or viaduct in the city, dedicated or devoted to public use.

*Tenant and occupant.* The terms "tenant" and "occupant," applied to a building or land, include any person holding a written or oral lease thereof or who occupies the whole or part of such building or land, either alone or with others.

*Tense.* Words used in the past or present tense include the future as well as the past and present.

*Time computation.*

- (1) The time within which an act is to be done or a proceeding had or taken shall be computed by excluding the first day and including the last. When any such time is expressed in hours, the whole of Sunday and of any legal holiday, from midnight to midnight, shall be excluded.
- (2) If the last day within which an act is to be done or a proceeding had or taken falls on a Sunday or legal holiday, the act may be done or the proceeding had or taken on the next secular day.
- (3) When the last day within which a proceeding is to be had or an act done, which consists of any payment to or the service upon or the filing with any officer, agent, agency, department or division of the state or any county, city, village, town, school district or other subdivision of the state, of any money, return, statement, notice or other document, falls on a Saturday and the duly established official office hours of such officer, agent, agency, department or division to which such payment is to be made or with which such return, statement, report, notice or other document is required to be filed do not include any office hours thereof on such Saturday, the proceeding may be had or taken or such act may be done on the next succeeding day that is not a Sunday or a legal holiday.
- (4) Regardless of whether the time limited in any statute for the taking of any proceeding or the doing of any act is measured from an event or from the date or day on which such event occurs, the day on which such event took place shall be excluded in the computation of such time.
- (5) The term "legal holiday," as used in this definition, means any statewide legal holiday provided in Wis. Stats. § 895.20. When an act is permitted to be done by the use of the postal service and the last day within the time prescribed by law for performing such act falls on a legal public holiday under federal law, or other holiday designated by the President such that the postal service does not receive registered mail or make regular deliveries on that day, the day shall be considered a legal holiday for purposes of this section.

*Wis. Stats.* and *statute*. The abbreviation "Wis. Stats." and the word "statute" mean the current edition of the official Wisconsin Statutes, as amended from time to time.

*Written and in writing*. The terms "written" and "in writing" include any representation of words, letters or figures, whether by printing or otherwise.

*Year*. The term "year" means a calendar year.

### **Sec. 1-3. Catchlines of sections and other headings.**

The catchlines of the several subsections and sections and the headings of chapters, articles and divisions of this Code are intended as mere catchwords to indicate the contents of the subsection, section, chapter, article or division, and shall not be deemed or taken to be titles or substantive portions of such subsections, sections, chapters, articles or divisions, nor, unless expressly so provided, shall they be so deemed when any of such subsections, sections, chapters, articles or divisions, including the catchlines or other headings, are amended or reenacted.

### **Sec. 1-4. Filing of documents incorporated by reference.**

Whenever in this Code any standard, code, rule, regulation or other written or printed matter is adopted by reference, it shall be deemed incorporated in this Code as if fully set forth in this Code, and the clerk-treasurer shall file, deposit and keep in his office a copy of the code, standard, rule, regulation or other written or printed matter as adopted. Materials so filed, deposited and kept shall be public records open for examination with proper care by any person during the clerk-treasurer's office hours, subject to such orders or regulations which the clerk-treasurer may prescribe for their preservation.

(Code 1986, § 25.03)

### **Sec. 1-5. References to chapters or sections.**

All references to chapters or sections are to the chapters and sections of this Code unless otherwise specified.

### **Sec. 1-6. History notes, editor's notes, state law references and cross references.**

The history notes appearing in parentheses after each section and the editor's notes and state law and cross reference notes throughout the Code are for the benefit of the user of the Code and shall not be considered as part of the text of the Code.

### **Sec. 1-7. Provisions considered continuation of existing ordinances.**

The provisions appearing in this Code, so far as they are the same as those of the Municipal Code of the City of Evansville, 1986, and of ordinances existing at the time of adoption of this Code, shall be considered as a continuation thereof and not new enactments.

**Sec. 1-8. Code does not affect prior offenses or rights.**

Nothing in this Code or the ordinance adopting this Code shall affect any offense or act committed or done, or any penalty or forfeiture incurred, or any contract or right established or accruing, before the effective date of this Code.

**Sec. 1-9. Effect of repeals and amendments.**

- (a) The repeal of an ordinance or portion of this Code shall not revive any ordinance or portion of this Code in force before or at the time the provision repealed took effect. The repeal of an ordinance or a portion of this Code shall not affect any punishment or penalty incurred before the repeal took effect, or any suit, prosecution or proceeding pending at the time of the repeal, for an offense committed under the provision repealed.
- (b) The repeal or amendment of any section or provision of this Code or of any other ordinance of the common council shall not:
  - (1) By implication be deemed to revive any ordinance not in force or existing at the time at which such repeal or amendment takes effect.
  - (2) Affect any vested right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed or amended, unless the privilege of repealing such obligation or privilege has been reserved by the city.
  - (3) Affect any offense committed or penalty or forfeiture incurred previous to the time when any ordinance is repealed or amended, except that when any forfeiture or penalty has been mitigated by the provisions of any ordinance, such provisions shall apply to and control any judgment to be pronounced after such ordinance takes effect for any offense committed before that time.
  - (4) Affect any prosecution for any offense or the levy of any penalty of forfeiture pending at the time when any ordinance is repealed or amended, but the right of action shall continue and the offender shall be subject to the penalty as provided in such ordinances and such prosecution shall proceed in all respects as if such ordinance had not been repealed, except that all such proceedings had after the time this Code takes effect shall be conducted according to the provisions of this Code.

**Sec. 1-10. Certain ordinances not affected by Code.**

Nothing in this Code or the ordinance adopting this Code shall be construed to affect any ordinances or parts of ordinances relating to the following subjects and not conflicting with any of the provisions of the Code:

- (1) The issuance of corporate bonds and notes of the city of whatever name or description.

- (2) The establishment of grades, curblines and widths of sidewalks in the public streets and alleys.
- (3) The fixing of salaries of public officials and employees.
- (4) Rights, licenses or franchises or the creation of any contract with the city.
- (5) The lighting of streets and alleys.
- (6) The establishment of the grade of a street.
- (7) The annexation of territory to the city.
- (8) The naming and changing of names of streets, alleys, public grounds and parks.
- (9) The letting of contracts without bids.
- (10) The establishment of alderperson districts, alderperson district boundaries and election precincts.
- (11) Tax and special assessment levies.
- (12) Release of persons from liability.
- (13) Construction of any public works.
- (14) Water, sewer and electric rates, rules and regulations and sewer and water main construction.
- (15) Budget ordinances, resolutions and actions.

(Code 1986, § 25.05)

#### **Sec. 1-11. General penalty<sup>4</sup>.**

- (a) *Established.* Unless otherwise provided in this Code, any person who shall violate any of the provisions of the Code shall, upon conviction of such violation, be subject to a penalty, which shall be as follows:
  - (1) *First offense.* Any person found guilty of violating any provision of this Code may, upon conviction thereof, be ordered to forfeit not less than \$5.00 and not more than \$1,000.00, plus applicable costs, surcharges, penalty assessments and fees, and in default of payment of such forfeiture and costs of prosecution may be incarcerated in the county jail until the forfeiture and costs are paid, but not exceeding 90 days for each separate offense; provided, however, that imprisonment under this subsection shall be imposed only in accordance with the provisions of Wis. Stats. §§ 800.09 and 800.095.
  - (2) *Second offense.* Any person found guilty of violating any provision of this Code who shall previously have been convicted of a violation of the same

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<sup>4</sup> **State law references:** Penalty for violation of ordinances, Wis. Stats. § 66.115; bail generally, Wis. Stats. § 66.114; outstanding unpaid forfeitures, Wis. Stats. § 66.117; actions for violations of municipal ordinances, Wis. Stats. § 66.12; fines and costs in municipal court, Wis. Stats. § 814.65.

ordinance within one year may, upon conviction thereof, forfeit not less than \$10.00 and not more than \$2,000.00 for each such offense, plus applicable costs, surcharges, penalty assessments and fees, and in default of payment of such forfeiture and costs may be incarcerated in the county jail until the forfeiture and costs of prosecution are paid, but not exceeding 90 days; provided, however, that imprisonment under this subsection shall be imposed only in accordance with the provisions of Wis. Stats. §§ 800.09 and 800.095.

- (b) *Continued violations.* Each violation and each day a violation continues or occurs shall constitute a separate offense. Nothing in this Code shall preclude the city from maintaining any appropriate action to prevent or remove a violation of any provision of this Code.
- (c) *Execution against defendant's property.* Whenever any person fails to pay any forfeiture and costs of prosecution upon the order of any court for violation of any ordinance of the city, the court may, in lieu of ordering imprisonment of the defendant, or after the defendant has been released from custody, issue an execution against the property of the defendant for such forfeiture and costs.
- (d) *Payment of costs of notices.* Costs of prosecution shall include a fee for each notice or letter, as established by the council from time to time by resolution and as set forth in appendix A, for prosecution of ordinance violations that require or use notices sent by any department or agency of the city. The city department or agency sending a notice shall advise in the notice to the recipient of this cost and add it to the forfeiture amount due.

(Code 1986, § 25.04; Ord. No. 2000-1, § 1, 2-8-2000)

#### **Sec. 1-12. Additions and amendments deemed part of Code.**

Any and all additions and amendments to this Code, when passed in such form as to indicate the intention of the common council to make the addition or amendment a part of this Code, shall be deemed to be incorporated in this Code, so that reference to the "Municipal Code of the City of Evansville, Wisconsin" shall be understood and intended to include such additions and amendments.

#### **Sec. 1-13. Supplementation of Code.**

- (a) By contract or by city personnel, supplements to this Code shall be prepared and printed whenever authorized or directed by the common council. A supplement to the Code shall include all substantive permanent and general parts of ordinances passed by the common council or adopted by initiative and referendum during the period covered by the supplement and all changes made thereby in the Code, and shall also include all Charter ordinances, adopted or amended, during the period. The pages of a supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.



- (b) In preparing a supplement to this Code, all portions of the Code which have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.
- (c) When preparing a supplement to this Code<sup>5</sup>, the codifier (meaning the person, agency or organization authorized to prepare the supplement) may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:
- (1) Organize the ordinance material into appropriate subdivisions;
  - (2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the Code printed in the supplement, and make changes in catchlines, headings and titles;
  - (3) Assign appropriate numbers to sections and other subdivisions to be inserted in the Code and, where necessary to accommodate new material, change existing section or other subdivision numbers;
  - (4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections \_\_\_\_\_ through \_\_\_\_\_" (inserting section numbers to indicate the sections of the Code which embody the substantive sections of the ordinance incorporated into the Code); and
  - (5) Make other nonsubstantive changes necessary to preserve the original meaning of ordinance sections inserted into the Code; but in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the Code.

#### **Sec. 1-14. Conflicting provisions.**

If the provisions of the different chapters of this Code conflict with or contravene each other, the provisions of each chapter shall prevail as to all matters and questions arising out of the subject matter of such chapter.

(Code 1986, § 25.02(1))

#### **Sec. 1-15. Severability of parts of Code.**

It is declared to be the intention of the common council that the sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional, invalid or unenforceable, such unconstitutionality, invalidity or unenforceability shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code, since such would have been enacted by the common council without the incorporation in this Code of any such unconstitutional phrase, clause, sentence, paragraph or section.

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<sup>5</sup> **State law references:** Code of ordinances, Wis. Stats. § 66.035.